

**COMMONWEALTH OF KENTUCKY  
MINE SAFETY REVIEW COMMISSION  
ADMINISTRATIVE ACTION NO. 03-MSRC-002**

**COMMONWEALTH OF KENTUCKY,  
DEPARTMENT OF MINES AND MINERALS**

**COMPLAINANT**

**v.**

**FRANK G. HEAD, JASON OWEN,  
NICHOLAS DAY, et al.**

**RESPONDENTS**

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**FINAL ORDER REGARDING  
RESPONDENT FRANK G. HEAD**

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This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant and Respondent Frank G. Head, and the members of the Commission having reviewed the Settlement Agreement filed on April 4, 2003 in the matter herein, and the Commissioners being sufficiently advised,

**IT IS HEREBY ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The Respondent, Frank G. Head's Underground Mine Foreman's Certificate, # A-\*\*\*-\*\*, issued by the Commonwealth of Kentucky, shall be **REVOKED** for a period of one (1) year, effective April 3, 2003;
3. The Respondent, Frank G. Head, shall turn over his underground mine foreman's certificate to a representative of the KDMM on or before April 1, 2003, at a time and place to be arranged by the parties;
4. Respondent Head shall be required to re-take and pass the mine

foreman's examination given by the KDMM before his underground mine foreman's certificate will be returned to him. The revocation of said certificate shall continue indefinitely, until Respondent Head passes the underground mine foreman's examination;

5. The Respondent, Frank G. Head's Surface Mine Foreman's Certificate, # S-\*\*\*-\*\*, issued by the Commonwealth of Kentucky, shall be **REVOKED** for a period of one (1) year, effective April 3, 2003;

6. The Respondent, Frank G. Head, shall turn over his surface mine foreman's certificate to a representative of the KDMM on or before April 1, 2003, at a time and place to be arranged by the parties;

7. Respondent Head shall be required to re-take and pass the mine foreman's examination given by the KDMM before his surface mine foreman's certificate will be returned to him. The revocation of said certificate shall continue indefinitely, until Respondent Head passes the surface mine foreman's examination;

8. The Respondent, Frank G. Head's Assistant Underground Mine Foreman's Certificate, # A-\*\*\*\*-\*\*, issued by the Commonwealth of Kentucky, shall be **REVOKED** for a period of one (1) year, effective April 3, 2003;

9. The Respondent, Frank G. Head, shall turn over his assistant underground mine foreman's certificate to a representative of the KDMM on or before April 1, 2003, at a time and place to be arranged by the parties;

10. Respondent Head shall be required to re-take and pass the assistant mine foreman's examination given by the KDMM before his assistant

underground mine foreman's certificate will be returned to him. The revocation of said certificate shall continue indefinitely, until Respondent Head passes the assistant underground mine foreman's examination;

11. The Settlement Agreement signed by the parties and filed with the Commission shall be incorporated by reference and attached hereto;

12. This Final Order shall be considered to constitute a "first offense" as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent Head, resulting in an adjudication of guilt by the Commission, shall be deemed "subsequent offenses" as defined by 805 KAR 8:010, Section 1(13); and

13. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, Frank G. Head, in this matter. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission. Pursuant to KRS 351.194(8), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of an order.

Entered this \_\_\_\_\_ day of May 2003.

BAYARD V. COLLIER, CHAIR  
MINE SAFETY REVIEW COMMISSION

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing FINAL ORDER REGARDING RESPONDENT FRANK G. HEAD was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this \_\_\_\_\_ day of May 2003:

FRANK G. HEAD

\*\*\*\*\*

HENDERSON KY \*\*\*\*\*

And by regular mail, postage pre-paid to:

JASON OWEN

\*\*\*\*\*

\*\*\*\*\*

CAVE IN ROCK IL \*\*\*\*\*

NICHOLAS DAY

\*\*\*\*\*

CLAY KY \*\*\*\*\*

And by messenger mail to:

COMMISSIONER FRANK DELZER  
DEPT. OF MINES & MINERALS  
1025 CAPITAL CENTER DRIVE  
FRANKFORT KY 40601

HON. TONY OPPEGARD  
GENERAL COUNSEL  
DEPT. OF MINES & MINERALS  
1025 CAPITAL CENTER DRIVE  
FRANKFORT KY 40601

And the original shall be kept on file:

MINE SAFETY REVIEW COMMISSION  
132 BRIGHTON PARK BLVD.  
FRANKFORT KY 40601

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DIANE SCHULER FLEMING  
GENERAL COUNSEL

MINE SAFETY REVIEW COMMISSION

KENTUCKY MINE SAFETY REVIEW COMMISSION

KENTUCKY DEPT. OF MINES & MINERALS	)	
	)	
Complainant	)	
	)	
v.	)	Administrative Action No. 03-MSRC-002
	)	
	)	
FRANK G. HEAD, GARY DEMPSEY,	)	
MARK ENGLER, JASON OWEN,	)	
TIMOTHY SHELTON & NICHOLAS DAY	)	
	)	
Respondents	)	
	)	

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**SETTLEMENT AGREEMENT BETWEEN KDMM & FRANK G. HEAD**

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Come the Complainant, the Kentucky Department of Mines & Minerals (“KDMM”) and Respondent Frank G. Head (“Head”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration for the dismissal of this action against him and the cancellation of the hearing scheduled for May 8, 2003, Head - without admitting the allegations made against him in KDMM’s Complaint - hereby agrees to the **REVOCATION OF HIS UNDERGROUND MINE FOREMAN’S CERTIFICATE (#A-\*\*\*-\*\*), THE REVOCATION OF HIS SURFACE MINE FOREMAN’S CERTIFICATE (# S-\*\*\*-\*\*), AND THE REVOCATION OF HIS ASSISTANT UNDERGROUND MINE FOREMAN’S CERTIFICATE (#A-\*\*\*\*-\*\*), EACH FOR A PERIOD OF ONE (1) YEAR**, said penalties effective upon the signing of this Settlement Agreement by both parties. Head shall turn over his

underground and surface mine foreman's certificates, as well as his assistant underground mine foreman's certificate, to a representative of the KDMM on or before April 1, 2003, at a place and time to be arranged by the parties.

Head further agrees that if he wants to become a certified underground or surface mine foreman or a certified assistant underground mine foreman in the Commonwealth of Kentucky after the expiration of the said revocation periods, he will have to re-take and pass the applicable Kentucky examination prior to re-applying to the Kentucky Mining Board for the applicable certificate.

Head further agrees that this Settlement Agreement, and any final order issued herein by the Mine Safety Review Commission ("the Commission"), will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1 (5); and that any future adjudication against him by the Commission - regarding a separate alleged offense - will be deemed a "subsequent offense" as defined at 805 KAR 8:010, Section 1 (13).

The parties state that they have carefully read and considered this Settlement Agreement prior to signing the Agreement, and that they understand and agree to its terms and provisions. KDMM and Head acknowledge that there are no other promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

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FRANK G. HEAD

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FRANK X. DELZER, Commissioner



\*\*\*\*\*  
Henderson, Kentucky \*\*\*\*\*

Kentucky Dept. of Mines & Minerals  
P.O. Box 2244  
Frankfort, Kentucky 40602

\_\_\_\_\_  
DATE

\_\_\_\_\_  
DATE

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Settlement Agreement Between KDMM & Frank G. Head was mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2003, to: Frank G. Head, \*\*\*\*\*  
Henderson, Kentucky \*\*\*\*\*; Gary Dempsey, \*\*\*\*\*  
Sturgis, Kentucky \*\*\*\*\*; Mark Engler, \*\*\*\*\*  
Fredonia, Kentucky \*\*\*\*\*; William K. Siler, Attorney-at-Law, P.O. Box 255, Sturgis, Kentucky 42459; Jason Owen, \*\*\*\*\*  
Cave In Rock, Illinois \*\*\*\*\*; Timothy Shelton, \*\*\*\*\*  
Nebo, Kentucky \*\*\*\*\*; and Nicholas Day, \*\*\*\*\*  
Clay, Kentucky \*\*\*\*\*.

\_\_\_\_\_  
TONY OPPEGARD  
General Counsel  
KENTUCKY DEPT. OF MINES & MINERALS